IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 898 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JANMAMAD RAMJU

Appearance:

MR BD DESAI, APP for the appellant-State

MR AR THACKER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 12/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The acquittal of the respondents of the offences punishable under sections 302 read with section 341 as well as section 201 read with section 114 of the Indian Penal Code recorded by the learned Sessions Judge, Kutch at Bhuj vide judgment and order dated May 27, 1985 in Sessions Case No. 2/85, is subject matter of challenge in the present appeal, which is filed under section 378 of the Code.

2. The incident in question is alleged to have taken place on September 8, 1984 at the residence of respondent no.1. The respondent no.1 resides at village Mirzapur, Taluka : Bhuj, District : Kutch. According to the prosecution, on the date of incident, respondents no.2 & 3 had caught hold of deceased Jenabbanu, who was wife of respondent no.1; whereas respondent no.1 had throttled her to death. The prosecution case is that in order to cause disappearance of evidence of offence, the deceased was set on fire and respondent no.1 had given false information to the police officer incharge of Bhuj Taluka Police Station that the deceased had died an accidental death. The information given by respondent no.1 was reduced into writing and investigation was carried out. After holding inquest on the dead body, the same was sent for postmortem. The report of postmortem indicated that the deceased had died due to strangulation. Therefore, after necessary investigation, the accused were chargesheeted for the offences punishable under sections 302, 341, 201 read with section 114 of the Indian Penal Code.

3. As the case was triable exclusively by the Sessions Court, the same was committed to Sessions Court for trial. The learned Sessions Judge had framed charge against the accused at Exh.1 for the offences punishable under sections 302, 341, 201 read with section 114 of the Indian Penal Code. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. In order to prove the case against the respondents, the prosecution in all examined 7 witnesses. After recording of evidence of prosecution witnesses was over, the learned Sessions Judge had recorded statements of the respondents under section 313 of the Code and offered opportunity to explain circumstances appearing against them in evidence. On appreciation of evidence, the learned Sessions Judge has come to the conclusion that the charges levelled against the respondents are not proved beyond reasonable doubt and has acquitted the respondents vide judgment and order dated May 27, 1985, giving rise to the present

appeal.

4. Mr. B.D.Desai, learned counsel for the appellant submitted that respondents no.2 & 3 had caught hold of the deceased; whereas respondent no.1 had caused her death by throttling her and, therefore, the respondents ought to have been convicted of the offences with which they were charged. The learned counsel emphasized that the deceased was last seen in the company of the respondents and, therefore, the acquittal appeal should be accepted.

5. We have heard the learned counsel for the State and considered the evidence on record. It is an admitted position that there is no eye witness to the incident in question and the case solely rests on circumstantial evidence. It is true that the evidence of Dr. Ramji Bhanjibhai Kesarani, P.W.1 recorded at Exh.7 read with postmortem notes prepared by him and produced at Exh.8 establishes that the deceased had died a homicidal death. However, in our view, except proving homicidal death, the prosecution has failed to prove that any of the respondents was responsible for causing death of deceased Jenabbanu. The evidence of Jumabai, P.W.2 recorded at Exh.9, who is father of the deceased, indicates that the relations between the deceased and respondent no.1 were strained, but beyond that his evidence is not helpful to the prosecution in proving charges levelled against the respondents. Mahendra Hari Deru was examined by the prosecution to prove that the deceased was last seen in the company of the respondents. However, he did not support the prosecution case before the Court and was, therefore, permitted to be cross-examined by the prosecution. Similarly, Satar Amad, who is a child witness, was also examined to prove that the respondents had opportunity of committing crime in question, but he also did not support the prosecution case before the Court and was, therefore, treated as hostile witnesses. The evidence of Kesarbai indicates that she had suspicion that the deceased had stolen money belonging to her and, therefore, she had made complaint about the same before respondent no.1. However, Kesarbai states that thereafter she does not know as to what happened or how the deceased died. Two other witnesses, who were police officers, had also been examined to point out as to how the investigation had progressed in this case. It is true that evidence of hostile witnesses can be relied on in certain circumstances if it stands corroborated by another evidence. In this case, evidence of two witnesses who have turned hostile to prosecution is not corroborated by any evidence at all. Thus, the evidence,

in our opinion, fails to establish that the deceased was last seen together in company of the respondents. As observed earlier, the case solely rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. The prosecution is obliged to prove the circumstances on which it relies beyond reasonable doubt. The circumstances so proved must establish a complete chain pointing out guilt of the accused and the circumstances proved should not be compatible with the innocence of the accused. In our view, the prosecution has failed to prove the circumstances on which it proposes to rely and, therefore, the respondents cannot be convicted of the offences with which they were charged. Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, High Court should always give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt; and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of observing demeanour of the witnesses. On the totality of the facts and circumstances of the case, we are satisfied that the learned Sessions Judge did not commit any error in acquitting the respondents so as to warrant our interference in the present acquittal appeal. The appeal, therefore, cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(J.M.Panchal,J.)

(D.P.Buch, J.)

(patel)